

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EDWARD HUMPHREY,

Plaintiff,

v.

MODESTO POLICE DEPARTMENT,

Defendant.

No. 2:24-cv-01127-DC-CSK (PS)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANT'S MOTION TO DISMISS AND
DENYING PLAINTIFF'S MOTION TO
AMEND

(Doc. Nos. 13, 16, 22)

Plaintiff Thomas Edward Humphrey is proceeding *pro se* and *in forma pauperis* in this civil action initiated on January 1, 2024. (Doc. No. 1.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 4, 2025 the assigned magistrate judge issued findings and recommendations recommending that Defendant's motion to dismiss (Doc. No. 16) be granted because: (1) the only proper defendant in a Federal Tort Claims Act action is the United States, and Plaintiff has not named the United States as a defendant nor are there allegations to suggest there is a federal government actor; (2) Plaintiff concedes in his motion to amend his complaint that the Federal Tort Claims Act does not apply to Defendant Modesto Police Department; and (3) the complaint lacks a cognizable legal theory and does not allege any viable, specific causes of action besides reference to the Federal Tort Claims Act. (Doc. No. 22 at 5–6.) The magistrate judge also

recommended Plaintiff's motion for leave to amend his complaint (Doc. No. 13) be denied because: (1) Plaintiff only proposes adding a claim under the California Torts Claims Act, but that claim is barred by the timeliness requirement under the California Government Claims Act, making such amendment futile; (2) to the extent Plaintiff seeks relief from that timeliness requirement, he would need to file a petition for relief in a California state superior court, not a federal district court; and (3) Plaintiff did not file an opposition to Defendant Modesto Police Department's motion to dismiss. (*Id.* at 7–8.)

Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 9.) To date, no objections to the findings and recommendations have been filed, and the time in which to do so has now passed.

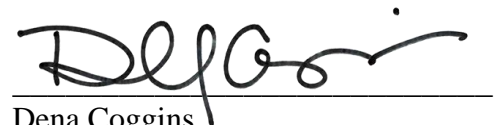
In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly,

1. The findings and recommendations issued on February 4, 2025 (Doc. No. 22) are ADOPTED in full;
2. Defendant Modesto Police Department's motion to dismiss (Doc. No. 16) is GRANTED;
3. Plaintiff's motion for leave to amend his complaint (Doc. No. 13) is DENIED;
4. This action is dismissed due to Plaintiff's failure to state a cognizable claim; and
5. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: March 11, 2025


Dena Coggins
United States District Judge